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SUPREME COURT OF THE UNITED STATES

MICHIGAN *v.* YOUNIS MANSI ESSA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF MICHIGAN

No. 85-1514. Decided June 30, 1986

The petition for a writ of certiorari is denied.

CHIEF JUSTICE BURGER, with whom JUSTICE O'CONNOR joins, dissenting from the denial of certiorari.

Respondent's home began to burn at about 6:20 p. m. on November 27, 1983. Within a short time the fire department responded, extinguished the fire, and departed. An hour and twenty minutes later an arson investigator of the city entered the home to conduct an investigation as to the cause. The Michigan Court of Appeals held that this was a search without a warrant which violated the Fourth Amendment. That court relied on the concurring opinion in *Michigan v. Clifford*, — U. S. — (1984) (JUSTICE STEVENS, concurring in the judgment), since the inspector gave respondent no notice of the inspection.

In *Michigan v. Tyler*, 436 U. S. 499 (1978), we held that the Fourth Amendment was not violated when investigators returned to the scene of a building fire the morning after a fire in order to continue a warrantless search which had commenced immediately following the fire the night before, but which could not be completed because of darkness, steam and smoke. We reasoned "that the morning entries were no more than an actual continuation of the first." *Id.*, at 511.

Clifford involved a warrantless search following re-entry of a home six hours after a fire had been extinguished. We granted certiorari in that case "to clarify doubt that appears to exist as to the application of our decision in *Tyler*." — U. S., at —. Our effort at clarification, however, proved illusive. A plurality held that an administrative warrant

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was required for a nonconsensual re-entry onto fire-damaged premises. *Id.*, at — (opinion of JUSTICE POWELL). JUSTICE STEVENS, writing separately, held that a post-fire warrantless entry would be reasonable so long as "the inspector had either given the owner sufficient advance notice to enable him or an agent to be present, or had made a reasonable effort to do so." *Id.*, at — (footnote omitted). JUSTICE REHNQUIST's dissent for four Members of the Court pointed out that these opinions, "far from clarifying the doubtful aspects of *Tyler*, sow[ed] confusion broadside." *Id.*, at —.

This case provides another opportunity for the Court to clarify the confusion arising out of the opinions in *Tyler*. Local authorities need direction for their fire inspectors, who are presently left with no clear guidance for conducting important and oft-occurring arson inspections in the wake of *Clifford*'s divided reasoning. Such inspections must be conducted promptly before vandals or weather conditions blur or destroy relevant evidence. I would grant the State's petition for certiorari and set the case for argument.